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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11  
12

13 NORCA INDUSTRIAL, LLC, a New York )  
14 Limited Liability Company, )

15 Plaintiff, )

16 v. )

17 ROBERT WREN, an individual; PRIMROSE )  
METALS, INC., a California corporation; )  
18 RICHARD RAYBIN, an individual; LIFETIME )  
CAPITAL GROUP, an unknown entity; )  
19 VICTORIA PICLOTTI, an individual; )

20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

NO. C 07 3425 EDL

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PLAINTIFF  
NORCA INDUSTRIAL, LLC'S *EX*  
*PARTE* APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION, AND FOR LEAVE  
TO CONDUCT EXPEDITED  
DISCOVERY**

Date: June 25, 2007

Time: 10:00 a.m.

Place: Clerk's Office, 16<sup>th</sup> Flr.

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# **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

Plaintiff Norca Industrial LLC ("Norca"), headquartered in New York, is engaged in the business of selling specialized "boiler tubes" ordered from customer specifications in the power generation business. Three weeks ago (on June 6th), Norca was shocked to discover that its Executive Vice President, Robert Wren ("Wren"), who worked in a two-person Norca office in Burlingame, California and was responsible for tens of millions of dollars in annual Norca sales, had for months, in concert with Norca's agent in Asia, Steve Song ("Song"), and others, been secretly and unlawfully diverting Norca's principal supplier and taking other unlawful steps to compete against Norca, ultimately forming a company named "Primrose Metals, Inc." and subsequently "Primrose Alloys, Inc." to do so. This unlawful activity of Wren included, for example:

- conspiring with Norca's agent in Asia (Song) for months and together secretly diverting Norca's relationship with its most important and exclusive vendor (Changwon in Korea), as well as its other vendors, for their new venture;
- disclosing Norca's trade secrets and confidential and proprietary information to third parties for use in their new venture ;
- diverting orders from Norca for their new venture;
- changing the telephone service from Norca's name to Wren's and then lying to Norca why he had done so;
- secretly traveling with an unauthorized third party to visit Norca accounts for the purpose of promoting their new venture;
- instructing Norca's agent (Song) to lie to Norca's president about his activities; and
- deliberately excluding Norca's president from Wren's trips to visit suppliers, so that Wren and Song could promote their new business while Wren was still employed by Norca.

Realizing they had been caught, defendants quickly unleashed the trojan horse. Within the following two days, defendants and others (as yet unidentified) incorporated Primrose Metals, Inc. ("Primrose") and registered the website [www.primrosemetals.com](http://www.primrosemetals.com) (which they launched shortly thereafter), and Song terminated his 10-year relationship with Norca.

1 As it turned out this was only the beginning. When Norca terminated Wren's  
2 employment on June 12<sup>th</sup>, the very next day defendants e-mailed an announcement on Primrose  
3 letterhead to all of Norca's confidential list of customers and suppliers soliciting their business.  
4 The announcement falsely stated that Primrose has "replaced" Norca, falsely referred to Norca's  
5 customer's as Wren's and fraudulently listed as the telephone and fax numbers for Primrose the  
6 same numbers which Norca used and paid for (with Wren now answering Norca's phone "Bob  
7 Wren's office" instead of "Norca"). Defendants's website falsely listed those same telephone/fax  
8 numbers, and also plagiarized substantial text from Norca's website. That same day, the only  
9 other Norca employee in the Burlingame office quit (Victoria Picolotti) and immediately joined  
10 Primrose.

11 Equally astounding, Norca discovered that Wren (while still employed by Norca) had  
12 diverted a request for quotation from one of Norca's major clients on a potential \$3MM+ order  
13 and that his new company (Primrose) had instead quoted on it. To make matters worse,  
14 Wren/Primrose had done so using a manufacturer's quote obtained from Norca's principal  
15 supplier (Changwon in Korea), which up to that time had been operating under an exclusivity  
16 arrangement with Norca. The ramifications of this interference with Norca's principal supplier  
17 are potentially devastating.

18 The sheer magnitude of defendants' unlawful steps taken to compete *while Wren was still*  
19 *employed by Norca* are evidenced by Primrose's own industry announcements and ads. Within  
20 one week of Wren's termination, Primrose was representing that it already had four offices (San  
21 Francisco, Colorado, Korea and China) and eight employees, was already representing mills  
22 (which generally takes weeks and months to accomplish), already had the capacity to finance the  
23 mills' entire production and was "poised to grow exponentially in 2007 and 2008."

24 On June 29<sup>th</sup>, Norca filed this action for trade secret misappropriation, unfair competition,  
25 breach of fiduciary duty and intentional interference against defendants Wren, Primrose Metals,  
26 Inc., Richard Raybin, Lifetime Capital Group and Victoria Picolotti (collectively referred to as  
27 "defendants"). Over the intervening weekend, Wren's counsel informed plaintiff that Wren has  
28

1 purportedly left Primrose Metals, Inc. and has now formed a new entity (Primrose Alloys, Inc.),  
2 presumably housed in the same office space. Plaintiff anticipates amending the complaint herein  
3 to add additional defendants, including, e.g., Primrose Alloys, Inc. and Wren's financier(s) and  
4 other conspirators (once identified).

5 Norca hereby seeks immediate temporary and preliminary injunctive relief to prevent  
6 defendants, two of whom are former Norca employees and those acting in concert with them, and  
7 including Wren's purported new company, Primrose Alloys, Inc., from, *inter alia*, continuing to:  
8 interfere with Norca's exclusivity arrangement with its principal and critical supplier (Changwon),  
9 misappropriate Norca's trade secret and confidential proprietary information, and unfairly  
10 compete with Norca. There is no doubt that defendants' conduct violated California law nor that  
11 Norca is likely to succeed on the merits of its claims.

12 Absent the requested injunctive relief, Norca will continue to suffer irreparable harm.  
13 Norca faces imminent danger of losing and/or having its long-established customer and supplier  
14 relationships as well as its trade secrets and other confidential proprietary information  
15 permanently damaged, all of which Norca has invested years of resources and energy developing  
16 and are crucial to Norca's being able to compete in this industry. In particular, Norca's  
17 exclusivity arrangement with the Changwon mill is pivotal to its boiler tube business. Further  
18 interference on defendants' part will in all likelihood permanently damage Norca's position in the  
19 marketplace. Unless defendants and their co-conspirators are enjoined from further trade secret  
20 misappropriation, Norca will be irreparably harmed since once that information is revealed it is  
21 impossible to "unring the bell." Defendants' false and misleading advertising and other anti-  
22 competitive activities (such as claiming to have replaced Norca, plagiarizing Norca's website and  
23 stealing Norca's telephone and fax numbers) will wreak havoc in the marketplace unless  
24 enjoined. This irreparable harm is compounded by the fact that many key witnesses - such as  
25 Norca's suppliers, their intermediaries and Wren's accomplice (Song), are located in Asia,  
26 making it difficult to compel their testimony and obtain documents. Further, given that Primrose  
27 is a start-up, Norca faces serious risk that any damage award here would be uncollectible.  
28



1 Finally, Norca requests leave to conduct expedited discovery. Immediate discovery is  
 2 necessary for plaintiff fully to prepare and present evidence for a preliminary injunction hearing,  
 3 and to determine, *inter alia*, the scope of defendants' unlawful conduct and misappropriation of  
 4 trade secret and confidential information, to identify all persons involved in the scheme (so they  
 5 can be enjoined and added as defendants at an early stage) and to determine the extent of  
 6 defendants' interference with plaintiff's suppliers and customers so that Norca can attempt to  
 7 mitigate its damages.

## 8 **II. STATEMENT OF FACTS**

9 NORCA is engaged in selling specialized "boiler tubes" ordered for customer  
 10 specifications in the power generation business, and selling through distributors industrial pipes,  
 11 tubing, valves, fittings and flanges. NORCA is one of North America's leading providers of  
 12 these products. Declaration of Norca's president, Selim Bahar ("Bahar Decl.") ¶3. The claims  
 13 in this case primarily relate to the boiler tube business. Given that boiler tubes are used to  
 14 construct or refurbish large power generation facilities, each order often ranges between  
 15 \$1 Million - \$3.5 Million. *Id.*, ¶2.

### 16 **A. Norca's "Boiler Tube" Business**

17 The "boiler tube" business is complex and the barriers to entry are substantial. Norca  
 18 contracts with a foreign manufacturer to have the boiler tubes specially manufactured to the  
 19 customer's specifications (most of which are different) and then imports the tubes to the United  
 20 States or elsewhere for sale and delivery to the customer.<sup>1</sup> This involves, for example, foreign  
 21 manufacturers, foreign and domestic buyers, substantial capital and financing requirements (since  
 22 Norca purchases the goods), and a myriad of logistical problems such as foreign quality control,  
 23

---

24  
 25 <sup>1</sup>Once Norca receives a "request for quotation" ("RFQ") for boiler tubes from a potential  
 26 customer, it typically contacts its principal supplier located in Asia (with whom it has an exclusive  
 27 relationship - see below) and obtains a manufacturing quote(s) to the specifications required by the  
 28 particular order. Norca analyzes the quote(s), formulates pricing and submits a quote to the  
 customer. On acceptance, Norca contracts with the manufacturer and imports the goods when  
 finished. Bahar Decl., ¶¶4-5.

1 customs, shipping and international insurance. It also requires substantial expertise and having  
 2 established, long-term relationships with a network of manufacturers (and their intermediaries)  
 3 located in Asia, customers and other providers (e.g., insurance companies, banks, shippers,  
 4 freight forwarders, customs brokers). Bahar Decl. ¶¶4-5. Norca bears the potential risk that a  
 5 customer will default on payment for multi-million dollar order(s). Bahar Decl. ¶5.

#### 6 **B. The Critical Changwon Mill**

7 Norca's principal manufacturer for boiler tubes is and at all times was a company named  
 8 "Changwon" located in Korea. The Changwon mill is owned by a Korean company (Posco) and  
 9 is represented by a Korean export agent (Posteel).<sup>2</sup> Until the recent actions of defendants as  
 10 described below, Norca was the exclusive representative for Changwon to Norca's U.S. based  
 11 customers for delivery to their worldwide fabrication facilities. This type of arrangement is a  
 12 standard practice followed by Korean mills. Norca, Changwon and Posteel personnel frequently  
 13 visited Norca customers together to market Norca's boiler tube products. For example, when a  
 14 Norca customer previously attempted to deal directly with Changwon, Changwon refused and  
 15 informed the customer that Norca was its exclusive representative. Bahar Decl. ¶6.

#### 16 **C. Norca's Trade Secret and Confidential Proprietary Information**

17 Norca's success and profitability is dependent in significant part upon maintaining the  
 18 confidentiality of its trade secrets and proprietary information. Bahar Decl. ¶7. This includes, for  
 19 example and without limitation, the following:

- 20 • Norca's pricing information, pricing strategies, pricing formulation  
 21 methods and profit margins. Bahar Decl. ¶7(a).
- 22 • Norca's proprietary credit insurance program. (This credit insurance  
 23 program was developed to allow Norca to transact business with potential customers which  
 24 Norca deems to be credit risks to guard against the possibility that those customers will default  
 25 on their payment obligations. This program was extremely difficult to obtain, is unique to the  
 26 industry, is very complicated and took months to negotiate.) Bahar Decl. ¶7(b)

27 \_\_\_\_\_  
 28 <sup>2</sup> Changwon recently changed its name to "Posco Specialty Steel Co. Ltd."

• The identity of the complete list of manufacturing facilities used by Norca and the specific contact person at each; the identities of the intermediaries used by Norca to contact and negotiate with each such facility and the specific contact person for each; the credit, payment terms, shipping, insurance and other requirements demanded or accepted by each such facility; and Norca's evaluation of the expertise, competence and reliability of each facility to manufacture particular types of products to specification in a timely fashion. Bahar Decl. ¶7(c).

• The identity of Norca's customers and the specific contact names for each, the product specifications and requirements for each and Norca's working knowledge of the decision-making process for each customer. Bahar Decl. ¶7(d).

• Norca's proprietary software, which contains, among other things, Norca's entire "trading package" with respect to the non-boiler tube business. (This proprietary software has been developed by Norca over more than 20 years and is updated from time to time. It is used by Norca to, among other things, analyze worldwide supplier and market information and formulate quotes on its broad distributor line of products.) Bahar Decl. ¶7(e).

It has taken years and substantial resources for Norca to develop the above information and these relationships, which permit Norca to operate quickly, effectively and competitively in the marketplace. Bahar Decl. ¶7(e). This information is not known to the general public nor within this industry. Norca has at all times taken reasonable steps to ensure the secrecy of such trade secret and proprietary and confidential information. Norca limits the disclosure of such information to its sales personnel, which total less than ten persons. Norca has not shared, and does not share, such information with persons or entities outside of Norca. Bahar Decl. ¶8.

#### **D. Robert Wren**

Beginning in approximately 1998, Norca hired defendant Robert Wren ("Wren") as a vice president to sell products on behalf of Norca to Norca's customers. Bahar Decl. ¶9. Wren reported to Norca's president, Selim Bahar ("Bahar"). Because Wren resided in Burlingame, California, for convenience sake SVF, a Norca affiliate, opened a small two person office located at 330 Primrose Road, Suite 508, in Burlingame, California for Wren and one other Norca

1 employee to work from. As part of his Norca sales duties, Wren primarily worked with one  
2 particular buying agent, Steve Song (hereafter "Song"), who was associated with Norca and  
3 located in South Korea. Song, on behalf of Norca, primarily interacted with manufacturers, their  
4 agents and other intermediaries located in Asia, with whom Norca had excellent working and  
5 often long-term relationships. These contacts principally included Changwon, through its owner  
6 (Postco) and export agent (Posteel), with whom Norca had an exclusive relationship. Bahar Decl.  
7 ¶¶6, 10.

8 As part of his employment, Wren had access to and frequently employed the Norca trade  
9 secrets and confidential and proprietary information identified above. Wren was directly and  
10 integrally involved in determining Norca's pricing guidelines, strategies, formulations and profit  
11 margins. He was linked into Norca's computer system in New York, was knowledgeable about  
12 Norca's proprietary software (located on the system) and was involved in a major contemplated  
13 upgrade of that software, having had frequent conversations with Norca's president on this  
14 project in 2007. Wren was likewise knowledgeable about Norca's credit insurance program, and  
15 was intimately familiar with Norca's confidential and proprietary supplier and customer  
16 information. Bahar Decl. ¶11.

17 Wren, acting together with Song, became very successful in generating sales for Norca,  
18 primarily in the boiler tube business. By 2006, Wren and Song were primarily responsible for  
19 generating for Norca annual sales totaling tens of millions of dollars. Bahar Decl. ¶12. Given  
20 this success, in or about late 2006, Wren was promoted to Executive Vice President of Norca.  
21 As part of this promotion, Wren agreed to move to the New York office with the understanding  
22 that, assuming the transition went smoothly, in a relatively short period of time he would take  
23 over management of all Norca business operations and administration. Although Wren came to  
24 New York on several occasions in or about early 2007 to house hunt and begin this transition, he  
25 subsequently began dragging his feet in moving forward. Bahar Decl. ¶13.

1           **E.     Wren's Suspicious Behavior**

2           By Spring 2007, Wren had begun acting strangely. He became uncharacteristically  
3 guarded in his conversations with Norca's president (Bahar) concerning his [Wren's] and Song's  
4 business activities and business prospects for Norca. Bahar Decl. ¶14(a)

5           In May 2007, Norca discovered that the telephone bill for Norca's Burlingame office was  
6 no longer being sent by the telephone company to Norca in New York (as had always previously  
7 been done), but instead was now addressed and being sent to Wren individually. When Norca  
8 asked Wren about this, he shrugged it off and said it must have been a mistake. Bahar Decl.  
9 ¶14(b), Exhs. A-B. (This turned out to be a lie. Following Wren's departure set forth below,  
10 Norca learned that on April 11th, Wren had personally contacted the phone company and  
11 directed that the billing name and address on the bill be changed from "Norca Industrial Co., 185  
12 Great Neck Road, Great Neck, NY 11021" to "Robert Wren, 330 Primrose Rd., Suite 508,  
13 Burlingame, CA 94010.") *Id.*

14           Norca also discovered, in reviewing Wren's expense reports, that he had paid for two car  
15 spaces at one hotel and two hotel breakfasts on one morning, suggesting that he had traveled with  
16 an unauthorized third party in visiting Norca customer accounts. When asked about this matter,  
17 Wren became defensive, hostile, offered no explanation and directed that those additional  
18 charges be deleted. Bahar Decl. ¶14(d), Ex. C.

19           **F.     The Scheme Is Uncovered**

20           As a result of Wren's suspicious behavior, on June 6, 2007, Norca accessed the  
21 company's computer server located at Norca's office in New York and reviewed Wren's emails  
22 located on that server. Bahar Decl. ¶15. In reading those e-mails, Norca was shocked to  
23 discover, *inter alia*, that Wren, Song and others had for months been secretly soliciting Norca's  
24 principal supplier and actively taking other improper actions to compete with Norca, that Wren  
25 had disclosed trade secret/confidential information to a third party for that purpose and that Wren  
26 had directed Song to lie to Bahar. For example:

1                   1.       The “You and Me” Emails.

2           Beginning in at least December 2006 through May 30, 2007, Wren and Song sent  
3 approximately thirty (30) e-mails to each other containing the “subject” heading “You and Me”  
4 or its abbreviation (“Y and M”). Bahar Decl. ¶15(a). On December 18, 2006, Wren and Song  
5 exchanged “you and me” emails concerning Norca’s relationship with its principal supplier  
6 (Changwon of Korea), and Wren cautioned Song: “Please keep to you and me and let’s discuss.”  
7 Bahar Decl. ¶15(a), Ex. D. The meaning of this phrase was subsequently spelled out in a “you  
8 and me” e-mail sent by Wren to Song on March 28, 2007, stating “We (you and me) will have  
9 our own company one day. I am sure. Be patient.” Bahar Decl. ¶15(a), Ex. E. Song  
10 immediately replied: “If you go, I go. I will always be with you.” Id. The following day Wren  
11 replied “This is You and Me.” Bahar Decl. ¶15(a), Ex. F.

12                   2.       The Scheme.

13           Wren detailed this plan in an email to Song dated March 30th, stating that he intended to  
14 start a competing company using Changwon (*i.e.*, Norca’s principal and exclusive supplier) as  
15 the “key” (Bahar Decl. ¶15(b), Ex. E):

16           **“My plan is to build a business through South Korea to all of Asia. Add assistants**  
17 **under you (for example, Chinese speaking) and let you control all of Asia. Then I**  
18 **add sales people in America and focus on S. Korea. I am working on this plan.**  
19 **Boiler business is the base. Changwon is key. All efforts and full emphasis on**  
20 **Korea. Long term investments in key mills identified by you. You and I take**  
21 **ownership in the company. So as we build and pay employees we actually have**  
22 **something for our children long term. (emphasis added.)”**

23 In a followup e-mail dated April 1<sup>st</sup>, Wren acknowledged that the venture had gone past the  
24 planning stage: *“I am remodeling all our current suppliers in Korea and thinking to find the new*  
25 *sources in China that possible can be changed from [Norca’s agent’s] current suppliers.” (Id.)*  
26 Both of these e-mails were headed “You and Me.” *Id.* (emphasis added).



On March 27<sup>th</sup>, Norca received a new order from a customer, which was forwarded to Wren. That same day, Wren wrote an e-mail to Song headed "New Order #[redacted] you and me" (presumably intending to involve that order in his new venture). Wren stated that he was giving Song a specified commission rate, and instructed Song not to tell Norca's president (Bahar) about it. Wren also urged: "Please keep thinking about building a long term business in Korea and China through you" and again instructed Song: "do not mention to [Bahar]." Bahar Decl., ¶15(c), Ex. E.

### 3. Financing For The Scheme.

On April 5th, Wren sent an email asking Song to identify "1-2 very good South Korean Banks," preceded by "You and Me" in the text. (Bahar Decl., ¶15(d), Ex. G). When Song did so the following day, Wren replied that: "The idea is to set up financing through a Korean bank in order to best present ourselves (y[ou] and m[e] as owners) to Posco [*i.e.*, Changwon - Norca's principal supplier] and other Korean makers. I have a financial guys (sic) and I am working for our kids." (*Id.*) Each of these emails contained the subject header abbreviation: "Y and M." *Id.*

### 4. Disclosure of Norca's Trade Secrets.

On April 5, 2007, Wren forwarded Song's e-mail identifying these banks to a third party (Richard Raybin at rabin@flcg.com), stating "FYI." Bahar Decl., ¶15(e), Ex. H; Declaration of Counsel, ¶¶2-3, Exs. A-B. That same day, Wren also sent Richard Rabin a highly confidential Norca document containing a summary of Norca's credit insurance program described in Section IIC above. Bahar Decl., ¶15(f), Ex. I. This summary details Norca's credit insurance program and the terms of its credit insurance for one of Norca's principal customers. Bahar Decl., ¶15(f). This was a confidential, unique and difficult credit insurance arrangement to procure and took months to do so. *Id.* Wren was not authorized to disclose this information to a third party. *Id.*

### 5. Wren Seeks To Exclude Norca's President From Visits to Suppliers.

Given the importance of Norca's relationships with its suppliers (principally Changwon), Norca's president (Bahar) typically accompanied Wren and Song on visits to suppliers. In an April 9<sup>th</sup> email headed "Y and M", however, Wren told Song that he did not

1 want Bahar to join them on upcoming supplier visits and therefore intended to book them at a  
 2 time when Bahar was busy or on vacation (Bahar Decl., ¶15(g), Ex. J). (This was obviously so  
 3 they could, while ostensibly traveling for Norca on business, recruit additional manufacturers for  
 4 their new venture.)

5 **6. Wren Targets Additional Suppliers.**

6 A week later, Song and Wren exchanged emails headed "You and Me," outlining  
 7 additional manufacturers they intended to recruit for their new venture. Bahar Decl., ¶15(h), Ex.  
 8 K.

9 **7. Wren/Song Refuse to Cooperate With One Of Norca's Suppliers.**

10 On May 29<sup>th</sup>, in response to Bahar's direction that Wren provide quotes to a customer for  
 11 its new plant, Song told Wren: "Let's not cooperate [with one of Norca's established  
 12 intermediaries for a major supplier]." There was no legitimate business reason for Wren to  
 13 refuse to do so. Bahar Decl., ¶15(I), Ex. L.

14 **G. This Shocking Discovery Accelerates Defendants' Scheme**

15 In response to these shocking revelations, that same day (June 6<sup>th</sup>) Norca demanded that  
 16 Wren and Song immediately meet with Norca management in New York (without specifically  
 17 saying why). Bahar Decl., ¶16. Song gave excuses not to do so and Wren initially agreed but  
 18 then cancelled. *Id.* No doubt realizing their scheme had been unearthed, defendants put their  
 19 scheme into overdrive. Within the next two days: defendants (through Raybin's company  
 20 "Lifetime Capital Group") registered the internet domain name www.primrosemetals.com. (on  
 21 June 6<sup>th</sup>) and launched that website shortly thereafter; Song severed his 10-year relationship with  
 22 Norca (on June 7<sup>th</sup>); and defendants and other as yet unidentified persons incorporated a  
 23 California entity named "Primrose Metals, Inc."<sup>3</sup> ("Primrose") (on June 8<sup>th</sup>). Bahar Decl., ¶¶16-  
 24 17; Counsel Decl., ¶¶4, Ex. C. Starting on or about June 11<sup>th</sup>, Wren unilaterally changed the  
 25 voice mail announcement on the Norca Burlingame office telephone to "You have reached Bob  
 26 \_\_\_\_\_"

27 <sup>3</sup> Not coincidentally, the Norca office is located on Primrose Ave in Burlingame. Bahar  
 28 Decl., ¶21.



Wren's office" rather than the usual "You have reached Norca Industrial Company." Bahar Decl., ¶18.

#### H. Norca Terminates Wren's Employment.

On June 12<sup>th</sup>, Norca terminated Wren's employment. Bahar Decl., ¶19, Ex. M.. That same day, defendant Victoria Picolotti, the only other Norca employee who worked at the Burlingame office, announced she was quitting and immediately joined defendants' new company (Primrose). Bahar Decl., ¶¶20, 27, Exs. N, U.

#### I. Defendants Unleash Their Trojan Horse

Within 24 hours following Wren's termination, defendants sent an announcement by e-mail to one of Norca's principal export agents (and presumably to all other companies and persons on Norca's confidential list of suppliers and customers) on PRIMROSE letterhead headed: "*Primrose Metals replaces NORCA Industrial Company*" (emphasis added). Bahar Decl., ¶¶21-22(a), Ex. O. The announcement:

- falsely represented that "Bob Wren is pleased to announce that Primrose Metals has replaced Norca Industrial Company in providing financial, operating and logistical support to his customers and suppliers," when in fact the customers and suppliers belonged to Norca, not Wren, and Primrose had not "replaced" Norca (Bahar Decl., ¶22(a));
- falsely stated that the telephone and fax numbers of Primrose were (650) 344-3291 and (650) 344-9241, respectively, which were the telephone and fax numbers for Norca's Burlingame office and which bills were paid for by Norca (Bahar Decl., ¶22(b)<sup>4</sup>;
- represented that Primrose was already representing mills, already had "the capacity to finance the [mill's] entire production with competitive terms and timely payments," was already carrying a "broad range of insurance and provides other financial arrangements to bridge the risks of international trade," and already "has the capital to finance our purchases

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<sup>4</sup> This laid bare why Wren had secretly switched the phone bill to his own name. The announcement also listed the address for Primrose to be in the same Burlingame office building as Norca, but a different suite number, obviously adding to the intended confusion. Bahar Decl., ¶22(b).

[and], the systems and staff to provide state-of the art customer service”(Bahar Decl., ¶22(c));  
and

represented that Primrose had the capability “to match or exceed the terms offered by other trading firm,” evidencing defendants’ intent further to use Norca’s confidential and proprietary or trade secret information since it is generally not known what sales terms are offered by other trading firms (Bahar Decl., ¶22(d).

Defendants thereafter issued a second announcement, which contained many of these same representations, stated that Wren had joined Primrose as Vice President of Sales and again listed the telephone and fax numbers for Primrose which belonged to Norca. Bahar Decl., ¶23, Ex. P.

Both announcements listed the website for Primrose as: [www.primrosemetals.com](http://www.primrosemetals.com). This website likewise fraudulently listed the telephone and fax numbers for Primrose which belonged to Norca. Bahar Decl., ¶24(a). Ex. Q. Defendants also plagiarized verbatim and/or in substantially similar form a majority of the text appearing on the norca.com website (owned by Norca) directly onto the Primrose website. Bahar Decl., ¶24(b), Exs., R-S.<sup>5</sup>

**J. The True Magnitude of Defendants’ Unlawful Scheme Is Becomes Evident.**

On June 18th, less than one week after Wren was terminated, Primrose began advertising for a “Corporate Controller” on the internet. The advertisement represented that, *inter alia*, Primrose is a “heavily funded start-up metals trading company, with offices in SF, Colorado, Korea and Shanghai,” that it has eight employees and that it is “poised to grow exponentially during 2007 and 2008.” Decl., ¶27, Ex. U. The representations in this ad and the earlier announcements, if true, reveal the shocking magnitude of Wren’s unlawful activities to compete against Norca while still employed by Norca. Given the barriers to entry in this business, it would not have been possible to achieve this magnitude of operation, nor even start representing any manufacturers at all, on a weeks’ notice, *unless* defendants had already had *weeks - if not*

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<sup>5</sup> The language on the norca.com website has been there for years. Norca has spent substantial resources in developing/maintaining its site. Bahar Decl., ¶24(b).

1 months - of advance preparation and active discussions/solicitations with potential suppliers,  
 2 customers and vendors - all while Wren was still employed by Norca. Bahar Decl., ¶¶22(c), 27.  
 3 *Id.*<sup>6</sup>

4 **K. Diverted Orders**

5 In mid-June, Norca further discovered that Wren, while employed by Norca, had failed to  
 6 disclose a request for quotation ("RFQ") from a customer, usurped it for his new venture and  
 7 shortly thereafter submitted a quote on behalf of Primrose (in the range of \$3.0-\$3.5 Million).  
 8 Bahar Decl., ¶25. Specifically, on June 12<sup>th</sup>, Norca's New York office discovered that one of its  
 9 long-standing customers had issued an RFQ on a project on June 1<sup>st</sup> with a June 11<sup>th</sup> deadline to  
 10 respond. *Id.* Although this RFQ had been sent to Wren on June 1<sup>st</sup>, he never disclosed it to any  
 11 Norca official. When Norca found out, it immediately submitted a late quote to this customer.  
 12 *Id.* The customer then told Norca that Primrose had already submitted a quote from Norca's  
 13 principal manufacturer (Changwon) and that Primrose's quote was 9% lower than Norca's. *Id.*<sup>7</sup>  
 14 Declaration of Robert Blumenkrantz, ¶¶1-6, Ex. A.

15 The disclosure that Primrose had obtained a quote from Norca's principal supplier  
 16 (Changwon) was shocking. Norca was the exclusive representative for Chanwong to Norca's  
 17 U.S. based customers for delivery to their world wide fabrication facilities. Bahar Decl., ¶25(c).  
 18 Wren himself, and Changwon's owner and agent, had all acknowledged this fact on many  
 19 occasions. *Id.* The securing of this quote necessarily meant that Wren had been having on-going  
 20

21  
 22  
 23 <sup>6</sup> Manufacturers (even if they know an individual personally) will require details about a new  
 24 trader's financial backing and wherewithal, and need to have it approved, before they will agree to  
 25 have a trader start representing them or before they provide a quote to him or her. This process  
 takes weeks, if not months. Bahar Decl., ¶22(c).

26 <sup>7</sup> Given the significant differential, Wren likely underbid this RFQ to get the business and  
 27 establish a toe-hold for Primrose in the industry and drive business away from Norca, and likely used  
 28 his knowledge of Norca's confidential pricing structures, strategies and information in formulating  
 this quote. *Id.* Bahar Decl., ¶25(b).

1 discussions with Changwon or its representatives about his new venture for weeks or months - all  
2 while he was employed by Norca.<sup>8</sup> *Id.*

### 3 L. The Need for Injunctive Relief

4 A temporary restraining order and preliminary injunction against defendants, and their  
5 agents, employees and persons acting in concert with them (now also to include Primrose Alloys,  
6 Inc.), are necessary to avoid further irreparable harm to Norca for the following reasons:

7 *First*, these actors should be restrained from contacting, obtaining quotes, contracting  
8 with, accepting deliveries from or doing business with Changwon (now "Posco Specialty Steel  
9 Co. Ltd.") directly or through intermediaries. Bahar Decl. ¶29(a). While employed by Norca,  
10 Wren conspired with Norca's agent in Asia (Song) for months and together secretly diverting  
11 Norca's relationship with its most important and exclusive vendor (Changwon in Korea), as well  
12 as its other vendors, for their new venture. Wren's emails confirm that he was specifically  
13 targeting Changwon ("Changwon is key") in order to start up his competing business. Bahar  
14 Decl., ¶15b, Ex. E. Absent a restraining order, this critical relationship with Changwon will be  
15 further disrupted and cause further irreparable harm to Norca. It also may be difficult to prove  
16 the damages caused by such disruption, especially since Changwon, its intermediaries, Song and  
17 other persons residing overseas will almost certainly be witnesses, and it will likely be difficult to  
18 compel them to testify in this action or to produce documents. Bahar Decl., ¶29a. Norca also  
19 faces a serious risk that any judgment for damages will be uncollectible. Primrose Metals, Inc. is  
20 a startup and Wren does not appear to have the financial wherewithal to pay a significant damage  
21 award. *Id.*

22 *Second*, these actors should be restrained from further disclosing and/or using Norca's  
23 trade secrets and proprietary and confidential information identified in Section II C above. Norca  
24 has spent years and substantial resources developing its pricing information and strategies, its  
25

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26 <sup>8</sup> Based on several e-mails sent during the first week of June 2007, it also appears that Wren  
27 may have diverted, or attempted to divert, a potential Norca order to a competitor in Petaluma,  
28 California. Bahar Decl., ¶ 26, Ex. T.

1 insurance credit program, its proprietary software with its entire "trading package" and in  
2 establishing and maintaining its confidential list of Asian suppliers (and their intermediaries),  
3 customers and vendors (Bahar Decl, ¶29(b)) and their manufacturer- and customer- specific  
4 information. The foregoing are key to Norca remaining competitive in the marketplace. Absent  
5 the requested injunctive relief, defendants will reap an unfair and substantial competitive  
6 advantage over Norca, which will irreparably injure Norca. The full extent of the substantial  
7 harm which Norca would suffer by such use and/or dissemination may be difficult to prove,  
8 especially given that many of the witnesses and documents are located overseas. *Id.*

9 *Third*, these actors should be restrained from contacting the companies on Norca's  
10 confidential list of customers and suppliers. Defendants have already sent out announcements to  
11 Norca's customers and suppliers announcing not only that Wren is now working for a  
12 competitor, but soliciting their business using a variety of misrepresentations. Bahar Decl.,  
13 ¶29(c).

14 *Fourth*, these actors should be restrained from quoting, or entering into contracts, based  
15 on requests for quotes received during Wren's employment with Norca. Absent the requested  
16 injunctive relief, Norca faces the likelihood of both losing the business and then being left with  
17 an uncollectible judgment. Bahar Decl., ¶29(d).

18 *Fifth*, these actors should be enjoined from using the telephone and facsimile numbers  
19 used by Norca or representing that these numbers belong to defendants; from continuing to  
20 represent that Primrose has "replaced" Norca and that Norca's suppliers and customers are  
21 defendants'; and from continuing to use language directly copied from Norca's website onto  
22 defendants' own website. Absent such relief, this type of conduct will continue to sow  
23 confusion in the marketplace and put Norca at a competitive disadvantage. Bahar Decl., ¶29(e).  
24 Plaintiff's resulting damages may be difficult to prove, especially since, again, many of the  
25 witnesses reside overseas. *Id.*

26  
27  
28

1 *Finally*, defendants should be enjoined from disposing or destroying any evidence of their  
 2 solicitation or servicing of Norca's suppliers or customers or other use of Norca's trade secrets or  
 3 proprietary information.

### 4 **III. NORCA HAS SATISFIED THE REQUIREMENTS FOR ISSUANCE OF** 5 **INJUNCTIVE RELIEF**

#### 6 **A. The Ninth Circuit Standard for Issuance of Preliminary Injunctive Relief**

7 In the Ninth Circuit, injunctive relief is appropriate when the moving party can satisfy one  
 8 of two legal standards. Under the traditional standard, the moving party must show: (1) a strong  
 9 likelihood of success on the merits; (2) the possibility of irreparable injury to plaintiff if such  
 10 relief is not granted; (3) a balance of hardships favoring the plaintiff; and (4) granting the  
 11 injunction will serve the public interest. *See Stanley v. University of Southern California*, 13  
 12 F.3d 1313, 1319 (9<sup>th</sup> Cir. 1994); *Southwest Voter Registration Education Project v. Shelley*, 344  
 13 F.3d 914 (9<sup>th</sup> Cir. 2003). Alternatively, a preliminary injunction is also appropriate if the moving  
 14 party demonstrates either (1) a combination of probable success on the merits and the possibility  
 15 of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips  
 16 strongly in favor of the moving party. *Stanley, supra*, 13 F.3d at 1319.

17 As set forth below, Norca will likely prevail on the merits of its claims. The conduct  
 18 Norca seeks to enjoin violates both statutory and common law, and will cause and continue to  
 19 cause irreparable injury to Norca. Monetary compensation for this injury would be difficult to  
 20 ascertain and provide inadequate relief to Norca. The Court should therefore grant Norca's  
 21 request for a temporary restraining order, thereby preserving the *status quo* until arguments can  
 22 be heard concerning Norca's request for a permanent injunction.<sup>9</sup>

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23  
 24 <sup>9</sup> The emergency nature of actions for TROs and preliminary injunctive relief often makes  
 25 it difficult to obtain affidavits from persons who would be competent to testify at trial. Accordingly,  
 26 the Court has discretion to consider hearsay evidence: "The trial court may give even inadmissible  
 27 evidence some weight when to do so serves the purpose of preventing irreparable harm before trial."  
 28 *Flynt Distrib. Co., Inc. V. Harvey*, 734 F.2d 1389, 1394 (9<sup>th</sup> Cir. 1984); *Heideman v. South Salt Lake*  
*City*, 348 F.3d 1182, 1188 (10<sup>th</sup> Cir. 2003) ("[T]he Federal Rules of Evidence do not apply to  
 preliminary injunction hearings.")



1           **B.       Norca Is Likely to Succeed On The Merits of Its Claims for Relief**

2           To obtain a TRO or preliminary injunction, a plaintiff must show a likelihood of  
3 prevailing on the merits. *Wilson v. Watt*, 703 F.2d 395 (9<sup>th</sup> Cir. 1983). A plaintiff, however,  
4 need not show it will positively prevail on the merits. *Gilder v. PGA Tour, Inc.*, 936 F.2d 417,  
5 422 (9<sup>th</sup> Cir. 1991). A reasonable probability or “fair chance” of success is the standard for  
6 granting preliminary injunctive relief. *Berda v. Grand Lodge of IAM*, 584 F.2d 308, 315 (9<sup>th</sup> Cir.  
7 1978). Given the overwhelming evidence before this Court, Norca can, at a minimum,  
8 demonstrate a reasonable probability of success on each of its claims.

9           **1.       Trade Secret Claims**

10          The evidence demonstrates that defendants misappropriated Norca’s trade secrets. Under  
11 the Uniform Trade Secret Act (“UTSA”), adopted by California at Cal. Civ. Code Section 3426,  
12 *et. seq.*, a trade secret is information that (1) derives independent economic value, actual or  
13 potential, from not being generally known to the public or to the other persons who can obtain  
14 economic value from its disclosure or use; and (2) is the subject of efforts reasonable under the  
15 circumstances to maintain its secrecy. Cal. Civ. Code. § 3426.1(d).

16          Norca’s trade secret information is set forth, *supra*, at Section IIC, including, e.g.,  
17 pricing-related and profit information, Norca’s proprietary credit insurance program, Norca’s  
18 complete list of manufacturers and manufacturer-related information, the identity of Norca’s  
19 customers and customer-related information and Norca’s proprietary software containing Norca’s  
20 entire “trading package.” This information derives independent economic value as a result of its  
21 not being known to the general public or to others within the industry. Bahar Decl. ¶8. Norca  
22 has spent years and significant company resources to develop, establish and maintain the  
23 information, materials and relationships, which are not known to the general public nor within  
24 the industry. Its secrecy enables Norca to be highly competitive in the marketplace. *Id.* Norca  
25 has at all times taken reasonable steps to ensure the secrecy of this trade secret and proprietary  
26 and confidential information. *Id.* Norca limits the disclosure of such information to its sales  
27 personnel, which total less than ten persons.

Here, there is direct evidence that defendants have misappropriated Norca's trade secrets. On April 5, 2007, Wren emailed defendant Richard Raybin a highly confidential Norca document containing a summary of Norca's proprietary credit insurance program. Bahar Decl. ¶15(f), Ex. I. This document details both the program itself as well as its application for one of Norca's principal customers, and is a very unique and difficult credit arrangement, into which Norca invested months of work. *Id.* See Cal Civ. Code § 3426.1(b) [misappropriation occurs by receipt of trade secret by someone who knew or had reason to know it was acquired by improper means or derived from a person who owed a duty to keep it secret].<sup>10</sup>

Given that Wren has already demonstrated his willingness to disclose Norca's trade secrets and confidential information, Norca faces imminent danger of losing its trade secrets unless defendants are enjoined from further misappropriation. The Court may enjoin both threatened and actual misappropriation of trade secrets. Cal. Civ. Code § 3426.2(a); *Imi-Tech Co. v. Gaaliani*, 691 F. Supp. 214 (S.D. Cal. 1986) (preliminary injunction granted to prevent threatened disclosure of trade secret information obtained from the plaintiff's former employees). The confidentiality of trade secrets here will be irrevocably compromised and Norca will suffer irreparable injury unless the Court intervenes and grants injunctive relief.

## 2. Unfair Competition Claim

Defendants' actions constitute unfair competition. See California Business and Professions Code § 17200 (unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising); See also *Courtesy Temporary Service, Inc.*, 222 Cal. App. 3d 1278, 1292 ("[i]ndeed, the cases are legion holding that a former employee's use of confidential information obtained from his former employer to compete with him and to solicit the business of his former employer's customers, is regarded as unfair competition"). California's unfair competition laws allow injunctive relief on these facts. See *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4<sup>th</sup> 163, 173-174 (2000)

<sup>10</sup> "Improper means" is defined as "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." *Id.* at § 3426.1(a).



1 (“[Section 17203] authorizes the court to fashion remedies to prevent, deter, and compensate for  
2 unfair business practices”).

3 Defendants’ unlawful, unfair and fraudulent business practices include, *inter alia*, (1)  
4 soliciting and diverting Norca’s exclusive relationship with its principal supplier (Changon),  
5 while Wren was still employed by Norca; (2) using Norca’s trade secrets and confidential and  
6 proprietary business information to compete against Norca; (3) fraudulently switching Norca’s  
7 telephone and fax numbers (which were paid for by Norca) from Norca to Wren; (4)  
8 fraudulently listing Norca’s telephone and fax numbers as belonging to Primrose in  
9 announcements and on the Primrose website and changing the voice message on the Norca  
10 telephone to “You have reached Bob Wren’s office”; (5) falsely announcing that Primrose  
11 Metals has “replaced” Norca and falsely referring to Norca’s customers and suppliers as Wren’s;  
12 (6) diverting a \$3MM+ RFQ received from a Norca customer to Primrose and then having  
13 Primrose quote on it; and (7) soliciting companies on plaintiff’s confidential customer and  
14 supplier lists. Unless restrained and enjoined, defendants will continue to engage in these or  
15 similar types of unlawful business actions and Norca will be irreparably harmed as a result.

### 16 **3. Breach of Fiduciary Duty and Breach of Loyalty Claims**

17 An employee owes a duty of loyalty to his employer and must act only in that employer’s  
18 best interest. *Stokes v. Dole Nut Co.*, 41 Cal. App. 4<sup>th</sup> 285, 295 (“[a]n employer has the right to  
19 expect the undivided loyalty of its employees”). This duty is breached “when the employee takes  
20 action which is inimical to the best interests of the employer.” *Ibid.* Further, as a vice-president  
21 of Norca, Wren owed Norca a fiduciary duty to act in its best interests and refrain from doing  
22 anything that would cause injury to Norca or deprive Norca of opportunities. *See Bancroft-*  
23 *Whitney v. Glen*, 64 Cal. 2d 327, 345 (1966).

24 The evidence demonstrates that Wren, in concert with defendants Primrose, Raybin, LTG  
25 and others, breached his fiduciary and loyalty duties to Norca by, *in addition to the evidence cited*  
26 *in Section IIIB2 above* and without limitation, (1) purposefully scheduling visits to suppliers at  
27 times when Norca’s president would be unable to accompany him; (2) instructing Norca’s agent  
28

(Song) to lie and hide information from Norca's president; and (3) traveling to customer accounts with an unauthorized third party for the purpose of promoting their new venture.

Defendants' conduct went beyond preparing to compete with Norca and crossed the line into active solicitation and breach of duties. *Huong Que, Inc. v. Luu*, 150 Cal.App.4th 400, 417 (2007) (even assuming defendants were entitled to participate in the formation of a competing business and to plan eventual employment with that entity, they would still breach a duty of loyalty by "diverting plaintiffs' customers to that competing business while ostensibly remaining plaintiffs' employees or agents"); *Eckard Brandes, Inc. v. Riley*, 338 F.3d 1082, 1086 (9<sup>th</sup> Cir. 2003) (former employees breached duty of loyalty when they formed a competing partnership and submitted a bid for a contract against their employer).

#### 4. Intentional Interference Claims

Norca's success depends upon its established relationships with agents and manufacturers throughout the world. Norca's most important economic relationship is its exclusive arrangement with the Changwon mill, located in Korea. Bahar Dec., ¶6. Changwon is Norca's principal manufacturer for boiler tubes. *Id.* Until defendants' wrongful actions, Norca had been the exclusive representative for Changwon to Norca's U.S. based customers. *Id.* Norca, Changwon and Posteel personnel frequently visited Norca customers together to market Norca's boiler tube products. *Id.* Wren himself, and Changwon's owner and agent, had all acknowledged this fact on many occasions. Bahar Dec., ¶25c. Changwon had previously rebuffed a Norca customer's attempt to deal directly with Changwon, informing that customer that Norca was Changwon's exclusive representative. Bahar Dec., ¶6.

Defendants Wren, Primrose, Raybin and LTG were aware of both the existence and value of Norca's exclusive relationship with Changwon and intentionally set out to destroy it. This

intention was evidenced in an email Wren wrote while still employed by Norca (and on Norca's email system):

"My plan is to build a business through South Korea to all of Asia. Add assistants under you (for example, Chinese speaking) and let you control all of Asia. Then I add sales people in America and focus on S. Korea. I am working on this plan. Boiler business is the base. **Changwon is key.** All efforts and full emphasis on Korea. Long term investments in key mills identified by you. You and I take ownership in the company. So as we build and pay employees we actually have something for our children long term."

Bahar Decl., ¶15(b), Ex. E (emphasis added). Unless defendants are enjoined from further targeting Norca's key suppliers and attempting to destroy Norca's business relationships, Norca will suffer substantial and irreparable injury. *See Ernst & Ernst v. Carlson*, 195 Cal. 2d 45, 50 (former employee properly enjoined from making various attempts to discredit the employer accounting firm's handling of its client.).

In addition to interfering with Norca's established business agreement with Changwon, defendants are also interfering with Norca's future contracts with its customers and suppliers. As discussed above, defendants have intentionally lured and are continuing to lure Norca's customers and suppliers to do business with Primrose instead of Norca by using Norca's trade secrets and confidential proprietary information, and otherwise unfairly and otherwise unlawfully and unfairly competing with Norca. Norca is therefore likely to succeed on the merits of its claim for intentional interference with prospective economic advantage. *See Lowell v. Mother's Cake & Cookie Co.*, 79 Cal. 3d 13 (1978).

### C. Irreparable Harm and Lack of an Adequate Remedy at Law

As more fully set forth in Section II L above, Norca will suffer grave and irreparable harm unless immediate injunctive relief is granted. Norca's ability to compete in the boiler tube business heavily depends on its exclusivity arrangement with Changwon. If defendants are not enjoined from further interfering with this relationship, Norca's will suffer losses for which it can never be fully compensated. *See Optinrealbig.com, LLC v. Ironport Systems, Inc.* 323 F.Supp.2d 1037, 1050 (N.D.Cal.,2004) (damage to business's goodwill, deprivation of unique contract right, or threatened existence of plaintiff's business can constitute irreparable injury, for purpose of

obtaining preliminary injunction); *Reuters Ltd. v. United Press Int'l, Inc.*, 903 F.2d 904, 908-909 (2d Cir.1990) (where wrongful conduct deprives a plaintiff of a unique contract right, there may be an irreparable harm); *Rx USA Wholesale Services Inc., v. Department of Health and Human Services*, 467 F. Supp. 2d 285, (E.D.N.Y. 2006) (“[i]rreparable harm may be found where the moving party makes a strong showing that economic loss would significantly damage its business above and beyond a simple diminution in profits”). The need for injunctive relief is even more pressing here where many of the key witnesses reside in Asia and Norca therefore risks being unable to compel their testimony at trial or to obtain their documents.

Norca’s goodwill and longstanding relationships with its customers will be irreparably damaged unless defendants are enjoined from, *inter alia*, stating that they have “replaced” Norca, referring to Norca’s customers as theirs, using Norca’s telephone and fax numbers on their advertisements and plagiarizing Norca’s website. Monetary damages will be inadequate compensation because these relationships may be injured beyond repair and because the injury may be difficult to calculate. *See Optinrealbig.com, supra*, 323 F.Supp.2d at 1050 ([d]amage to a business’ goodwill is typically an irreparable injury because it is difficult to calculate”); *American Express Fin. Advisors, Inc. v. Yantis*, 358 F.Supp.2d 818, 835 (N.D.Iowa 2005) (“[i]ntangible injuries, such as injury to goodwill and business relationships with customers, may be found to constitute irreparable harm”).

Defendants should also be enjoined from using and/or disclosing Norca’s confidential information. Monetary damages would be an inadequate remedy as it would be impossible to fully compensate Norca for the loss of its critical information, in which it has invested years of effort in both developing and keeping confidential and which is key to Norca’s success. *See Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 92-103 (3d Cir. 1992) (“An intention to make imminent or continued use of a trade secret or to disclose it to a competitor will almost always certainly show irreparable harm...”); *North Atlantic Instruments, Inc. v. Haber*, 188 F. 3d 38, 49 (loss of trade secrets cannot be measured in money damages).

1 Finally, even if Norca were able to calculate damages, a monetary judgment would still  
 2 be inadequate because Norca would likely be unable to collect from the defendants, whose  
 3 business is approximately three weeks old. *See Lakeview Technology, Inc. v. Robinson*, 446 F. 3d  
 4 655, 657 (7th Cir. 2006) (“[a]bility to *calculate* damages does not make that remedy adequate,  
 5 however, if the plaintiff cannot *collect* the award.”) (emphasis in original). Bahar Decl., ¶25c.

#### 6 **D. Balancing of the Hardships and the Public Interest**

7 In considering the appropriateness of injunctive relief, the Court must balance the  
 8 possible harm to the plaintiff in denying the request against the possible harm to the defendants  
 9 in granting it. *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531 (1987). Here,  
 10 defendants will suffer no undue hardship if the TRO is granted. The conduct Norca seeks to  
 11 enjoin is already prohibited by statutory and common law. The requested TRO merely seeks to  
 12 stop defendants from using Norca’s trade secrets and other information, from unlawfully and  
 13 unfairly competing with Norca, from unlawfully interfering with Norca’s business relationships  
 14 and from destroying or disposing of relevant evidence. The public interest will be served by  
 15 granting the requested TRO since plaintiff seeks to enjoin defendants’ false advertising and other  
 16 anti-competitive activities.

#### 17 **IV. THE COURT SHOULD PERMIT NORCA TO CONDUCT EXPEDITED** 18 **DISCOVERY**

19 The Court is authorized to issue an order permitting expedited discovery where good  
 20 cause is shown. F.R.C.P. 26(d); *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273,  
 21 276 (N.D. Cal. 2002). Good cause exists when the need for discovery outweighs the potential  
 22 prejudice to the party against whom discovery is sought. *Semitool*, 208 F.R.D. at 276-277  
 23 (ordering expedited discovery against defendants in a patent infringement case where discovery  
 24 would allow plaintiff to determine which of its other patents were being infringed). Here, good  
 25 cause exists for expedited discovery, including both depositions, document requests and  
 26 document subpoenas, which is necessary for Norca to ascertain the full extent of the unlawful  
 27 actions (e.g., solicitations, diversions, misrepresentations, misappropriations and other unlawful  
 28

conduct) by defendants, their agents, including but not limited to Primrose Alloy, Inc. and other actors, and to identify all of the actors involved in the unlawful conduct (some not yet ascertained.). This need is particularly pressing in light of the fact that Norca is seeking the discovery in connection with its request for a preliminary injunction. *Ellsworth Associates, Inc. v. U.S.*, 917 F.Supp. 841, 844 (D.D.C.,1996) ("Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings.") Immediate discovery is also necessary for plaintiff fully to determine the scope of defendants' interference with plaintiff's suppliers and customers so that Norca can attempt to mitigate its damages. The prejudice to defendants, if any, is minimal since the information sought is relevant and would otherwise be produced in the normal course of discovery. *See Semitool, supra*, 208 F.R.D., at 276.

The court should also grant plaintiff permission to take expedited discovery, including depositions and a document subpoena, directed to Wren's newly-established company, Primrose Alloys, Inc. Plaintiff first learned about the existence of Primrose Alloys, Inc. on June 30<sup>th</sup>. This company is apparently owned by Wren and is apparently carrying on the business previously conducted by Primrose Metals, Inc., although the exact nature and extent of this new company will not be fully known until discovery is conducted.

#### V. CONCLUSION

For all the foregoing reasons, plaintiff respectfully requests that the court grant the requested temporary restraining order and preliminary injunction and permit expedited discovery.

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